

BILL # HB 2107

TITLE: unlawful acts; commercial electronic mail

SPONSOR: Tully

STATUS: House Engrossed

REQUESTED BY: House

PREPARED BY: Kim Hohman

FISCAL YEAR

2003

2004

2005

EXPENDITURES

General Fund

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See below

FISCAL ANALYSIS

Description

HB 2107 prohibits sending commercial electronic mail (e-mail) if: 1) the transmission path of the message is falsified; 2) the subject line contains false or misleading information; or 3) the e-mail uses a third party's internet address or domain name without consent, to make it appear that the third party is the sender of the message. The bill requires any individual sending commercial e-mail to: 1) use the prefix "ADV" at the beginning of each subject line; 2) establish a procedure that allows recipients to remove themselves from future electronic mailings; and 3) establish a procedure that allows individuals to restrict the sale of their e-mail information to other entities. HB 2107 also identifies the circumstances in which a sender of commercial e-mail would not be in violation of the new requirements.

The bill allows, but does not require, the Office of the Attorney General (AG) to investigate unlawful commercial e-mail practices and establishes a Class 2 Misdemeanor for those who fail to comply with the requirements of the bill. The bill authorizes damages in addition to current civil penalties established in statute.

Estimated Impact

The JLBC Staff cannot provide a cost estimate for this bill since it is unknown how many violations of the commercial e-mail restrictions will occur, and how many of these cases the AG will choose to investigate. Since the bill does not require the AG to investigate each complaint, the AG may choose which cases it will pursue within existing resources.

The AG's Office does not believe that the bill will have an immediate fiscal impact since the AG is not required to investigate each case. The AG also indicates that because one of the new requirements for commercial e-mail is a subject line beginning with "ADV", investigations will be simplified as it will be easier for the AG to assess whether a violation has occurred. The AG has indicated that it will handle as many of these cases as existing resources will support.

Analysis

Current statute does not provide specific restrictions on commercial electronic mail. It is unknown how many of the violations outlined in the bill are currently occurring and therefore difficult to predict the number of future violations. The AG has indicated that these cases would be handled by the Consumer Fraud Division within the Office of the Attorney General. The AG has also indicated that it will be financially difficult for the division to handle many additional cases. While we have not identified a cost for this bill, it is possible that in future years the number of complaints received by the AG could result in a request by the AG for additional staff.

Local Government Impact

The fiscal impact of HB 2107 on local government cannot be determined since we do not know how many investigations will be handled by the AG, and how many of these will result in cases directed to the Superior Court. Depending on the number of additional cases handled by the Superior Court, the counties could incur increased court costs.

3/5/03